

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,	Case No. 97cr1214-MMA
Plaintiff,	<b>ORDER DENYING DEFENDANT'S MOTION FOR FORGIVENESS OF COSTS</b>
v.	[Doc. No. 135]
DARNELL L. HAYES, SR.,	
Defendant.	

On April 7, 1998, a jury found Defendant Darnell L. Hayes, Sr. guilty of conspiracy to defraud the United States (Count 1), mail fraud (Counts 2-54), and tax fraud (Counts 55-57). *See* Doc. No. 76. On September 8, 1998, the Court sentenced Defendant to a 30-month term of imprisonment, three (3) years of supervised release, a \$2,825.00 special assessment fee, and the costs of prosecution in the amount of \$33,661.31. *See* Doc. No. 93. Defendant appealed the judgment of conviction and the United States Court of Appeals for the Ninth Circuit affirmed the judgment in an en banc opinion. *See* Doc. No. 119. Defendant served his custodial term and his term of supervised release, during which he reported to the United States Attorney's Financial Litigation Unit and paid installments on the judgment debt. *See, e.g.,* Doc. No. 122.

Defendant has been summoned on several occasions over the years to appear before the Court at judgment debtor exams. *See* Doc. Nos. 123, 127-28. According to

1 Defendant, to date, he has “paid approximately \$23,065 in prosecution and court costs.”  
 2 Doc. No. 135 at 5.<sup>1</sup> Defendant, proceeding *pro se*, now moves the Court for “forgiveness  
 3 and compassion [sic] relief on the remaining prosecution costs and an immediate stop to  
 4 the monthly deductions of \$174.00” from his income. *Id.* at 6. As explained below, the  
 5 Court lacks the authority to grant Defendant the requested relief.

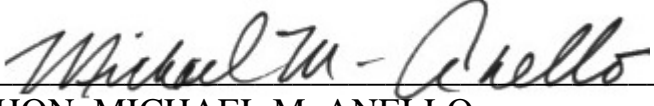
6 The Attorney General of the United States is responsible for collecting “fines,  
 7 penalties, costs, and other payments required under the sentence.” 18 U.S.C. §  
 8 3612(c)(3). A court may “remit all or part of the unpaid portion” of a monetary penalty  
 9 only “upon the petition of the Government showing that reasonable efforts to collect . . .  
 10 are not likely to be effective.” *Id.* § 3573. The current statutory scheme does not permit  
 11 petitions by the defense, nor does it authorize remittitur by the Court *sua sponte*. *See*,  
 12 *e.g.*, *United States v. Roper*, 462 F.3d 336, 341 (4th Cir. 2006) (holding that district  
 13 courts may not *sua sponte* remit special assessments).

14 Furthermore, “forgiveness” of Defendant’s unpaid balance by the Court arguably  
 15 would require a reduction of the amount owed and a corresponding amendment of the  
 16 judgment but there is no legal basis upon which to do so. This Court may only amend a  
 17 judgment, as relevant here, pursuant to 18 U.S.C. § 3582(c), or Federal Rules of Criminal  
 18 Procedure 35 or 36, none of which are applicable in this case. And to the extent  
 19 Defendant’s request could be construed as a collateral challenge to the judgment, the  
 20 statute of limitations for bringing any such challenge has long since expired. *See* 28  
 21 U.S.C. § 2255(f).

22 Accordingly, the Court **DENIES** Defendant’s motion.

23 **IT IS SO ORDERED.**

24 DATE: November 12, 2020

  
 HON. MICHAEL M. ANELLO  
 United States District Judge

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 28 <sup>1</sup> Citations refer to the pagination assigned by the CM/ECF system.